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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. [redacted] 93

SENFOUR INVESTMENT CO., INC.,
Appellant,

v.

KING COUNTY,
a Legal Subdivision of the State of Washington,
Appellee.

ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

REPLY OF APPELLANT TO MEMORANDUM OF THE UNITED STATES AS AMICUS CURIAE

JEROME M. JOHNSON
ROBERT B. LESLIE
CROSON, JOHNSON & WHEELON
Attorneys for Senfour Investment Co., Inc.

Office and Post Office Address:
900 United Pacific Building
Seattle, Washington 98104

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IN THE

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October Term, 1965

No. 1141

SENFOUR INVESTMENT CO., INC.,
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KING COUNTY,
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ON APPEAL FROM THE SUPREME COURT OF THE STATE OF WASHINGTON

REPLY OF APPELLANT TO MEMORANDUM OF THE UNITED STATES AS AMICUS CURIAE[1]

ARGUMENT IN REPLY

The United States as Amicus Curiae concludes that there is no occasion for review as concerns the interest of the United States for the reason that the decision be-

1. This Reply is submitted under the provisions Rule 24(3) in the eventuality that the appeal papers are treated as a petition for certiorari under 28 U.S.C. 2103.

low by the Supreme Court of the State of Washington, does not present the Securities and Exchange Commission with a recurrent issue of importance in Chapter X of Proceedings, and because federal tax collections have not been impaired thereby. No answer is made concerning the effect upon the judicial function of formulating and carrying out corporate reorganizations. Unless such a tax is of no consideration to creditors, purchasers and other persons involved in the reorganization, it of necessity hampers the court's initiative in planning and executing the final disposition of the debtor. In *California State Board of Equalization v. Goggin*, 245 Fed. 2d 44 (C.A. 9), certiorari denied, 353 U.S. 961, the court found taxation upon the event now in question to be categorically a burden upon that function of the United States.

The decision below is in direct conflict with *Goggin*, *Amicus'* distinction based upon dispersion of the assets versus their acquisition in toto notwithstanding. What became of the various assets upon liquidation of the debtor is singularly excluded from the court's concern in *Goggin*. The Court of Appeals determination was premised upon the identity of the seller and the purpose of the sale:

> "Any act which hinders, delays or burdens the accomplishment of this vital purpose constitutes an unlawful interference with the process of the court of bankruptcy and is invalid."
>
> "The tax is in fact upon the sale; the sale is for the essential purpose of liquidating; the liquidation process was burdened thereby."

The *Goggin* decision is dircetly impeached by Amicus upon the assumption that by giving meaning and intention to the phrase "applicable to such business to the same extent as if it were conducted by an individual or corporation" (28 U.S.C. §960) the Court of Appeals erroneously assumed an intent to immunize other acts of the trustee. Appellant submits that instead the court in *Goggin* observed the particularity of the Congressional permission to tax with respect to that power of the United States emanating from Article 1, §8 of the Federal Constitution:

> "Congress passed a specific statute relative to a trustee engaging in business in order to conform to the burdens borne by other members of particular business communities."

See also *In re West Coast Cabinet Works*, 92 F. Supp. 636, 640 (S.D. Calif. 1950):

> "The Congressional Record, 73 Congress 2(d) Session P. 6656, shows us that the bill prior to its amendment on the floor of the House, contained the word 'receiver' only, and a statement was made at that time that it was directed toward receivers and corporations appointed to run the business' . . . *et seq.*"

Goggin lays down a clear test of the taxability of sales made by trustee in bankruptcy. That decision was made with reference to principles of dual sovereignty and draws a line of demarcation important to creditors, debtors and other persons becoming involved in reorganization proceedings to whom such a tax is not an inconsiderable factor in finding workable solutions. The *Goggin* rule

should therefore be maintained, rather than diluted through denial of review, by summary reversal of the decision below.

Respectfully submitted,

JEROME M. JOHNSON
ROBERT B. LESLIE
CROSON, JOHNSON & WHEELON
Attorneys for Senfour Investment Co., Inc.